

1 **Kentucky Cabinet**

2 **Kentucky Board of Education**

3 **Department of Education**

4 **(Amendment)**

5 **707 KAR 1:310. Determination of eligibility.**

6 RELATES TO: KRS 157.200, 157.220, 157.224, 157.226, 157.230, 157.250, 157.260,  
7 157.270, 157.280, 157.285, 157.290, 157.360, 158.030, 158.100, 158.150, 160.290, 20  
8 U.S.C. § 1221(e), 20 U.S.C. § 1400-1419, 34 CFR 300.1-300.662.

9 STATUTORY AUTHORITY: KRS 156.070(1), 156.160, 157.220, 157.224, 157.260,  
10 and 167.015.

11 NECESSITY, CONFORMITY, AND FUNCTION: KRS 157.200 to 157.290 establish  
12 the statutory framework for special education programs in local school districts. KRS  
13 157.220 mandates that the Kentucky Board of Education adopt rules and administrative  
14 regulations to generally carry out these programs. KRS 156.035 sets forth the authority  
15 of the Kentucky Board of Education to implement any act of Congress appropriating  
16 funds to the state and to provide for the proper apportionment and disbursement of these  
17 funds in accordance with state and federal laws. 20 U.S.C. 1400 et.seq. and 34 C.F.R.  
18 Part 300 require that policies and procedures be adopted to assure the apportionment and  
19 disbursement of federal funds for exceptional children programs in accordance with  
20 applicable laws. This administrative regulation establishes requirements the  
21 determination of eligibility for special education of children who have disabilities.

1 Section 1. Determination of eligibility. (1) Upon analysis of intervention and assessment  
2 data, [~~completion of the tests and other evaluation materials~~] the ARC shall determine  
3 whether the child is a child with a disability who meets one or more of the eligibility  
4 categories as defined in 707 KAR 1:280 to the extent that specially designed instruction  
5 is required in order for the child to benefit from education. A LEA shall provide a copy  
6 of the evaluation report and the documentation of determination of eligibility to the  
7 parent.

8 (2) A child shall not be determined to be eligible if the determinant factor for that  
9 eligibility determination is a lack of:

10 (a) appropriate instruction in reading, including the essential components of reading  
11 instruction as established in the Elementary and Secondary Education Act, 20 U.S.C.

12 Section 6301 et.seq.; or

13 (b) appropriate instruction in math; or

14 (c) limited English proficiency; and the child does not otherwise meet eligibility criteria.

15 (3) [~~An evaluation shall not be required before the termination of a child's eligibility due~~  
16 ~~to graduation with a regular high school diploma or exceeding the age eligibility for~~  
17 ~~FAPE.~~]

18 [(4)] In making eligibility determinations, a LEA shall draw upon information from a  
19 variety of sources, which may include:

20 (a) response to scientific, research-based interventions;

21 (b) vision, hearing, and communication screenings;

22 (c) parental input;

23 (d) aptitude and achievement tests;

- 1 (e) teacher recommendations;
- 2 (f) physical condition;
- 3 (g) social or cultural background;
- 4 (h) adaptive behavior; or
- 5 (i) behavioral observations.
- 6 ~~[(a) aptitude and achievement tests;~~
- 7 ~~(b) parental input;~~
- 8 ~~(c) teacher recommendations;~~
- 9 ~~(d) physical condition;~~
- 10 ~~(e) social or cultural background; and~~
- 11 ~~(f) adaptive behavior.]~~

12 (5) A LEA shall ensure that information obtained from ~~[all of]~~ these sources, as  
13 appropriate for each student, is documented and carefully considered.

14 (6) In making a determination under the category of mental disability, the ARC may  
15 apply a standard error of measure, if appropriate.

16 (7) If a determination is made that a child has a disability and needs special education and  
17 related services, an IEP shall be developed for the child.

18 Section 2. Additional procedures for evaluating children with specific learning  
19 disabilities. (1) The determination of whether a child suspected of having a specific  
20 learning disability is a child with a disability and whether the specific learning disability  
21 adversely affects educational performance shall be made by the child's ARC. The ARC  
22 shall also include other professionals, relative to the area(s) of concern, such as a school  
23 psychologist, speech-language pathologist, or educational specialist. ~~[and at least one~~

1 ~~person qualified to conduct individual diagnostic examinations of children, which may~~  
2 ~~include a school psychologist, speech language pathologist, or remedial reading teacher.]~~

3 (2) Any ARC convened to discuss a child with a suspected or documented specific  
4 learning disability shall be collectively qualified to:

5 (a) conduct, as appropriate, individual diagnostic assessments in the areas of  
6 speech/language, academic achievement, intellectual development, or social-emotional  
7 development;

8 (b) interpret assessment and intervention data and apply critical analysis to that data;

9 (c) develop appropriate educational and transitional recommendations based on the  
10 assessment data; and

11 (d) deliver and monitor specially designed instruction and services to meet the needs of a  
12 child with a specific learning disability.

13 ~~(3) [(2)]~~ The ARC may determine a child has a specific learning disability if:

14 ~~[(a)]~~ the child does not achieve adequately, as indicated on multiple data sources, as  
15 appropriate, for the child's age or grade level standards aligned with the Kentucky  
16 Program of Studies, 704 KAR 3:303, in one or more of the following areas when  
17 provided with learning experiences and instruction appropriate for the child's age or  
18 state-approved grade level standards aligned with the Kentucky Program of Studies:

19 ~~[commensurate with his age and ability levels in one or more of the areas listed in this~~  
20 ~~subsection, if provided with learning experiences appropriate for the child's age and~~  
21 ~~ability levels and~~

22 ~~(b) the child has a severe discrepancy as identified by a validated regression method~~  
23 ~~between achievement and intellectual ability in one of the following areas:]~~

- 1 1. oral expression;
- 2 2. listening comprehension;
- 3 3. written expression;
- 4 4. basic reading skills;
- 5 5 reading fluency skills;
- 6 6. [5] reading comprehension;
- 7 7. [6]. mathematics calculation; or
- 8 8. [7] mathematics reasoning.
- 9 (b) the child fails to achieve a rate of learning to make sufficient progress to meet grade
- 10 level standards aligned with the Kentucky Program of Studies, 704 KAR 3:303 in one or
- 11 more of the areas identified in paragraph (3) of this section when assessed using a
- 12 response to scientific, research-based intervention processes; or
- 13 (c) the child exhibits a pattern of strengths and weaknesses in performance, achievement,
- 14 or both relative to ability level or intellectual development, that is determined by the
- 15 ARC to be relevant to the identification of a specific learning disability, using appropriate
- 16 assessments consistent with 707 KAR 1:300.
- 17 (4) [(3)] The ARC shall not identify a child as having a specific learning disability if
- 18 deficits in achievement are [the severe discrepancy between ability and achievements is]
- 19 primarily the result of:
- 20 (a) a visual, hearing, or motor impairment;
- 21 (b) mental disability as defined in 707 KAR 1:280 (36);
- 22 (c) emotional-behavioral disability; or
- 23 (d) cultural factors; [environmental, or economic disadvantage.]

1 (e) environmental or economic disadvantage; or

2 (f) limited English proficiency.

3 ~~(5) [(4)]~~ At least one team member other than the child's regular education teacher shall  
4 observe the child in the learning environment, including the regular classroom setting, to  
5 document academic performance and behavior in the area of difficulty. [~~'s academic~~

6 ~~performance in the regular classroom setting~~] If the child is less than school age or is out  
7 of school, the observation shall take place in an environment appropriate for the child.

8 (6) For a child suspected of having a specific learning disability, the ARC must consider,  
9 as part of the evaluation, data that demonstrates that:

10 (a) prior to, or as a part of the referral process, the child was provided appropriate  
11 instruction in regular education settings, including that the instruction was delivered by  
12 qualified personnel; and

13 (b) data-based documentation of repeated assessments of achievement at reasonable  
14 intervals, reflecting formal assessment of student progress during instruction, which was  
15 provided to the child's parent.

16 (7) If the child has not made adequate progress after an appropriate period of time, during  
17 which the conditions in subsections (6)(a) and (6)(b) of this section have been  
18 implemented, a referral for an evaluation to determine if the child needs special education  
19 and related services shall be considered.

20 ~~(8) [(5)]~~ An ARC shall develop documentation of a specific learning disability. [~~a~~  
21 ~~learning disability (LD) written report~~] This documentation [~~report~~] shall contain a  
22 statement of:

23 (a) whether the child has a specific learning disability;

- 1 (b) the basis for making that determination;
- 2 (c) the relevant behavior noted during the observation;
- 3 (d) the relationship of that behavior to the child's academic functioning;
- 4 (e) the educationally relevant medical findings, if any;
- 5 (f) whether the child does not achieve commensurate with the child's age and ability;
- 6 ~~[there is a severe discrepancy between achievement and ability that is not correctable~~
- 7 ~~without special education and related services and]~~
- 8 (g) whether there are patterns of strengths and weaknesses in performance or
- 9 achievement or both relative to age, State-approved grade level standards or intellectual
- 10 development in one or more of the areas described in 707 KAR 1:310 Section 2 (3) that
- 11 require special education and related services; and
- 12 (h) the determination of the ARC concerning the effects of environmental, cultural, or
- 13 economic disadvantage.
- 14 (i) the instructional strategies used and the student-centered data collected in response to
- 15 scientific, research-based intervention process.
- 16 (9) This documentation shall include notification to the child's parents concerning the
- 17 policies regarding:
- 18 (a) the amount and nature of student performance data that is collected and the general
- 19 education services that are provided;
- 20 (b) strategies for increasing the child's rate of learning; and
- 21 (c) the parents right to request an evaluation.
- 22 (10) ~~(6)~~ Each ARC member shall certify in writing whether the report reflects the
- 23 member's [his] conclusion. If it does not reflect the member's [his] conclusion, the team

1 member shall submit a separate statement presenting the member's [~~his~~] conclusions.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

\_\_\_\_\_  
(Date)

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Kevin M. Noland  
Interim Commissioner of Education

\_\_\_\_\_  
(Date)

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Keith Travis, Chairperson  
Kentucky Board of Education

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on May 31, at 10:00 a.m. in the State Board Room, 1<sup>st</sup> Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky, 40601, phone 502/564-4474, fax 502/564-9321.